Minutes of the 86th meeting of the Board of the EHRC

14 November 2019
Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8JX

Attending:
Commissioners
David Isaac, Chair
Suzanne Baxter
Pavita Cooper
Alasdair Henderson
Susan Johnson
Helen Mahy
Mark McLane
Lesley Sawers
Caroline Waters
Rebecca Hilsenrath, Chief Executive Officer (absent for item 6.10)

Officers
Dean Button, Interim Head of Performance and Effectiveness Unit (Items 7-10)
Joe Corcos, Director–People and Infrastructure (absent for item 6.10)
Melanie Field, Executive Director–Wales, and Strategy and Policy (absent for item 6.10)
David Gomez, Interim Director–Legal (item 6)
Joanna Gregson, Senior Principal–Legal (item 6)
Tessa Griffiths, Director–Strategy and Governance
Steve Lodge, Senior Principal–Legal (item 6)
Richard Mabbitt, Senior Associate-Governance
Callum MacInnes, Principal-Governance
Luke Taylor, Director-Evidence and Human Rights Monitoring (items 8-10)
Ben Wilson, Executive Director-England and Corporate Improvement and Impact (absent for item 6.10)

Guests
Alison Parken, Interim Chair-EHRC Wales Committee
Elysia McCaffrey, Acting Director-Government Equalities Office (absent for item 6.10).

1. Chair's welcome

1.1 David Isaac welcomed attendees. Alison Parken continued to attend as interim chair of the Commission's Wales Committee, pending the appointment of a Wales Commissioner.

1.2 The Board had been briefed before the meeting by Alasdair MacDonald and Rachel Robinson on the Commission's activities in the pre-election period.

Board members had asked for further briefing on the Commission's position if further powers were devolved to the Scottish (and Welsh) Governments following the election and Brexit. (**Action Alastair Pringle**). They had also requested a summary of the Commission's position in relation to the election and party manifestos, having in mind pre-election period rules for public bodies, to inform their engagement with stakeholders (**Action: Rachel Robinson**).

1.3 Board members had also discussed the Commission's senior structure, current vacancies and approach to talent management and succession planning, and agreed to cover the issues in more detail at a meeting to be chaired by Caroline Waters the following week (**Action: Joe Corcos**).

2. Apologies for absence

2.1 Apologies had been received from Alastair Pringle (ED – Scotland and Corporate Delivery) and Olufemi Oguntunde (Director - Finance and Procurement).

3. Declarations of interest

3.1 No declarations were made additional to those already registered.

4. Minutes of the last meeting

4.1 The minutes of the 85th Board meeting of 12 September 2019 (paper EHRC 86.01) were agreed as a true record, subject to clarification (at item 7.2) of the maximum appointment and reappointment periods set out in the Terms of Reference of the Scotland and Wales Committees. The Board was content for this to be resolved by discussion between the Wales and Scotland Committee chairs advised by officers (**Action: Lesley Sawers and Alison Parken with Heads of Wales and Scotland**).

5. Actions arising

5.1 The Board reviewed the log of actions arising from Board meetings (EHRC 86.02). The Board was content that actions were complete, progressing satisfactorily, or to be addressed under later agenda items.

6. Commissioner updates

6.1 Alison Parken presented the Wales Annual impact report (EHRC 86.03). The Board noted the range and depth of the Commission's work in Wales and thanked officers for their hard work and commitment. They thanked former Chair, June Milligan, Alison Parken and Wales Committee members for their strategic input and engagement with stakeholders across Wales.

6.2 Among the activities reported upon, Board members were pleased to note the impact of "Is Wales Fairer?" and its take-up by the Welsh Government. They noted also the Commission's ongoing monitoring of the Welsh-specific public

sector equality duties, and its consideration of how best to take work in this area forward in a more transformational way. They noted progress in incorporating UN charters into domestic legislation.

6.3 Recognising the wider opportunities of learning from the Commission's experiences and successes in Wales and Scotland, the Board asked Alison Parken and Lesley Sawers to consider with officers a light touch six-monthly update of the Commission's work in Wales and Scotland for the Board's information (**Action: Alison Parken and Lesley Sawers with Heads of Wales and Scotland**).

6.4 Lesley Sawers presented paper EHRC 86.04 which recommended the reappointment of Scotland Committee members Marsali Craig and David Crichton. The Board was pleased to agree the recommendation, and asked that their reappointments be progressed in the terms set out in the paper (**Action: Richard Mabbitt**). Lesley Sawers reported that with a Committee member departing in January, the Committee would have two potential vacancies, and the Scotland Team would be commencing a recruitment exercise in the new year to fill those and other vacancies arising from other members due to leave in early 2021.

6.5 Susan Johnson reported that the Audit and Risk Assurance meeting of 18 September had, in addition to standing items, carried out a self-assessment exercise; discussed the visibility of key operational risks; and reviewed assurance mapping. The Committee had reviewed an internal audit report on ICT, and a draft internal audit report on the Commission's enforcement and litigation activity. The Committee had emphasised to officers the importance of responding to audits in a constructive way in the interest of continuous improvement. The Committee was pleased with the initial work of the new Performance and Effective Unit, with its head, Ben Coates, now in place.

6.6 Melanie Field and Caroline Waters reported on the DAC meeting of 23 October. DAC had responded positively to initial business plan proposals, making a number of helpful comments, with intersectionality being a key theme throughout. DAC had also met with staff from the Office of the Commissioner for Public Appointments, and fed back on that body's work on diversifying public appointments, following the recommendations of the Holmes review.

6.7 DAC had also been briefed on the Commission's position on assisted dying and was content that the Commission maintain an approach of neutrality towards this contentious and complex issue, seeking to illuminate and inform the human rights debate as it unfolded around specific assisted dying cases or legislative proposals, parliamentary inquiries or debates, should these arise. The DAC felt strongly that it should be advised of any proposed Commission action to be taken under these circumstances, and that any such action should be taken with full knowledge of DAC members' views. The Committee emphasised the importance of the broader setting in which the assisted dying debate played out, and felt that the Commission could usefully clarify its positioning here without overcommitting itself. The Board was

content for this to be taken forward (**Action: Melanie Field/Charlie Hamilton**).

6.8 David Isaac asked that the legal advice received by the Commission on this matter be shared with Board members for information **(Action: Charlie Hamilton)**.

6.9 David Isaac, who had attended part of the DAC meeting, noted the Committee's wide expertise and experience, and that it was keen to engage with Board members. Pavita Cooper and Suzanne Baxter had expressed interest in attending the next DAC meeting, which representatives of the Social Mobility Commission would also attend.

6.10 Progress updates on the BBC and Labour Party investigations were provided by Suzanne Baxter and by Alasdair Henderson with members of the Legal team supporting. It was agreed that detailed updates on both investigations would be provided at the January Board meeting (**Action: Alasdair Henderson and Suzanne Baxter**).

7. Executive updates

7.1 The Board reviewed the CEO's report on strategic issues and performance (paper EHRC 86.05). Board members were generally content with progress and felt the format and level of detail in the report was useful. On specific points, Board members noted:

a) that officers would be revisiting the current KPI relating to numbers of strategic cases to ensure it reflected the impact of the Commission's strategic enforcement activity. A revised KPI will come to the Board early next year (**Action: David Gomez**);

b) that the Commission would keep resourcing under review as part of the wider business planning process to ensure that casework does not drop off while major investigations are underway;

c) that Counsel's opinion on Windrush had been received and a proposal on next steps would be put to the Board for decision by correspondence in December (**Action: Laura Lucking**);

d) the Commission's continuing discussion with the Government Property Agency relating to the move from Fleetbank House, and that the Commission were seeking exceptional permission to retain a central London office;

e) the proposed approach to the recent request to undertake a section 31 (Public Sector Equality Duty) assessment of the Department for Work and Pensions on its purported failure to take steps to minimise the impact of the gender pension gap for women. The Board agreed that the Commission should continue to monitor and influence this issue through ongoing policy work. It felt, however, that the use of the

Commission's enforcement powers should not at this stage be ruled out. It asked that this steer be taken into account by lead officers and that dialogue with GEO on the matter continue. The Board asked for a short brief and lines on this issue (**Action: Alasdair MacDonald**);

f) that the s28 Access to Transport project was largely on track with five current cases against a target of 25. Given the recent launch of the project and a forthcoming "going home for Christmas" campaign, officers felt the number of cases received was likely to increase to meet the target;

g) that work continued on gender pay gap enforcement. This was scheduled for discussion at a future Board meeting. Officers were asked to provide a between-meeting update on progress, including an update on how the Commission was linking this with Working Forward and clarifying understanding of the various metrics and definitions (**Action: Alasdair MacDonald**).

7.2 The Board reviewed the forecast outturn, year to date performance, and forecast financial risks at Period 6, as set out in the Finance Report (paper EHRC 86.06). The Board noted:

a) the ongoing financial risks related to the unpredictable timing and outcomes of legal cases to which the Commission was a party. The probability based downside risk for the Legal Directorate expenditure was £271k. The Commission expected at this stage an underspend of £190k and options for introducing pipeline projects and filling interim staff needs were under review by DG;

b) that, as part of the pre-spending review dialogue with GEO, the Commission had raised the issue of cost recovery and a crown guarantee in the event that cases were lost;

c) that ARAC, at its meeting of 26 November, would be scrutinising in detail up-side and down-side risk to assess the feasibility of quality and impact of dial up/down proposals, and pipeline projects; and

d) the need to keep the use of interim staff and consultants under review and properly accounted for.

7.3 David Isaac thanked discussants, and acknowledged the clarity of the management information presented in the report. The challenge for officers in the future was to look creatively at how the Commission could increase its legal resources to meet the expectations of stakeholders seeking more, and more visible, enforcement action.

8. Is Britain Fairer

8.1 Luke Taylor and Melanie Field spoke to paper EHRC 86.07. It was noted the Commission aspired for the 2021 version to be an even more accessible and

formative suite of products than previous years, while retaining the robustness of previous reports.

8.2 The Board was broadly content with the approach presented in the paper. They acknowledged the need to work smartly and efficiently, and to avoid duplication of effort with work carried out by other bodies, but were keen that this did not compromise the robustness of the evidence base. They felt it important that the report was an authoritative stand-alone piece of research in its own right, citing the statutory basis of the work, the Commission's independence and wider statutory role in holding the Government to account.

8.3 The Scotland Committee had reviewed the outline proposals, and had suggested closer alignment with the Commission's strategic aims, especially in respect of the proposed 'deep dives'. It had also asked the Commission to consider producing three nation-focussed reports alongside an aggregated Britain report. It felt the report itself could be concise with more use of analytical tools and data portals to support sharing the evidence.

8.4 The Wales Committee has also been consulted on the proposed strategic approach. Members were, again, broadly supportive.

8.5 The Board agreed that a Commissioner Working Group (CWG) be set up to provide strategic leadership for the project, with a staff steering group providing project leadership. Caroline Waters, Lesley Sawers and Alison Parken volunteered for the CWG, and Pavita Cooper would consider with Luke Taylor how she could best be deployed, given her existing role with the CWG for treaty monitoring. The Board felt that a similar level of funding as IBF 2018 (£500,000 spread over two financial years), was a reasonable working assumption, but asked for a further assessment once the proposals had been further worked up with the benefit of CWG input. **Action: Luke Taylor** to set up CWG meeting and bring back more detailed proposals to the March Board.

9. Treaty Tracker

9.1 Luke Taylor gave a demonstration of the Commission's treaty tracker. Board members were briefed on how this online tool brought together in an accessible and user-focussed format the views of the United Nations on different human rights issues in the UK, the status of treaty rights in the UK, and information on how to engage with international human rights mechanisms.

9.2 David Isaac thanked the Treaty Team for their work in bringing this complex project to completion, and thanked the Commissioner Working Group on Treaty Monitoring for its strategic input.

10. Any other business

10.1 With no other business being raised, David Isaac thanked Board members and staff for their contributions, and drew the formal meeting to a close. The Board would spend the remainder of the afternoon participating in an informal

business planning workshop with Executive Group members and Strategy Hub staff.

10.2 The Board would next meet on 22-23 January 2020.

Agreed by the EHRC Board at its meeting of 23 January 2020.